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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. BENJAMIN GOODEAU et al., Defendants and Appellants.	B202568 (Los Angeles County Super. Ct. Nos. BA317345, BA278375, BA308719

APPEAL from a judgment of the Superior Court of Los Angeles County, Jose Sandoval, Judge. Affirmed in part with modifications; remanded for limited resentencing.

Marilee Marshall & Associates and Jennifer L. Peabody, under appointment by the Court of Appeal, for Defendant and Appellant Benjamin Goodeau.

Maureen L. Fox, under appointment by the Court of Appeal, for Defendant and Appellant Andrew Johnson.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendants, Benjamin L. Goudeau and Andrew Johnson, Jr., appeal from their convictions for furnishing cocaine base. (Health & Saf. Code, § 11352, subd. (a).) Mr. Goudeau also appeals from his additional conviction of cocaine base possession for sale. (Health & Saf. Code, § 11351.5.) Mr. Goodeau admitted he had three previous convictions for violating Health & Safety Code section 11350. (Health & Saf. Code, § 11370, subds. (a), (c).) Mr. Johnson admitted that he was previously convicted of a serious felony (Pen. Code,[1] §§ 667, subd. (b)-(i), 1170.12) and served eight prior prison terms. (§ 667.5, subd. (b).) Mr. Goodeau argues the trial court improperly instructed the jurors with CALCRIM Nos. 220 and 222 and the sentence imposed as to count 3 should have been stayed pursuant to section 654, subdivision (a). Mr. Johnson joins in the instructional error contention. Mr. Johnson further argues the trial court improperly: denied his motions to exclude evidence and new trial; denied his request for an instruction on late discovery; and imposed prior prison term enhancements for case Nos. BA260241 and BA277349. The Attorney General argues that additional fees, penalties, and surcharges are due. We affirm with modifications and remand to allow the trial court to exercise its discretion regarding the imposition of prior prison term enhancements.

II. FACTUAL BACKGROUND

We view the evidence in a light most favorable to the judgment. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Elliot* (2005) 37 Cal.4th 453, 466; *Taylor v. Stainer* (9th Cir. 1994) 31 F.3d 907, 908-909.) On February 14, 2007, Los Angeles Police Officers Asatur Mkrtchyan and a partner were working in an undercover role near the corner of Field Avenue and Exposition Boulevard. At approximately 9:30 p.m., Mr. Johnson approached the undercover car in which Officer Mkrtchyan was seated in the

[1] All further statutory references are to the Penal Code unless otherwise indicated.

passenger seat. Mr. Johnson asked Officer Mkrtchyan, "What do you want?" Officer Mkrtchyan responded, "a 20" meaning $20 of drugs. Mr. Johnson further inquired, "Weed or rock?" Officer Mkrtchyan responded, "Rock," meaning cocaine base. Mr. Johnson said he had to call someone named "Goody." The officers followed Mr. Johnson in their undercover car to a nearby pay phone. Mr. Johnson said to the person on the phone line "Goody, I got somebody here who wants a 20." Thereafter, Mr. Johnson said he had to go back to where the initial solicitation occurred.

The officers again followed Mr. Johnson in their car. After waiting 5 or 10 minutes, another car, driven by Mr. Goodeau, pulled up the curb about 20 feet away from the officers. Mr. Johnson opened the passenger door of the car driven by Mr. Goodeau. Officer Mkrtchyan saw Mr. Johnson reach into the car. Mr. Goodeau reached toward Mr. Johnson. Mr. Johnson returned and demanded the money. However, Officer Mkrtchyan said, "Well, let me see the rock first." When Mr. Johnson produced a small rock like substance wrapped in black plastic, he was arrested. Officer Mkrtchyan notified other officers about the car that had arrived. Thereafter, officers in a black and white patrol car arrested Mr. Goodeau who was the sole occupant of the car.

When Mr. Goodeau's car was searched, Officer Fleming recovered a white plastic bag containing 15 individually wrapped black plastic bags like the one given to Officer Mkrtchyan. Officer Mkrtchyan found a larger piece of rocklike solid resembling cocaine base from the ashtray area of the car. The substance handed to Officer Mkrtchyan by Mr. Johnson and the substances found in Mr. Goodeau's car were later determined to consist of cocaine base weighing: 10.16 grams; 6.29 grams; and .48 grams. A search of Mr. Goodeau's person revealed currency in the denominations of: three $20 bill; two $10 bills; seven $5 bills; and fifteen $1 bills. Officer Mkrtchyan believed the cocaine base found in Mr. Goodeau's car was possessed for purpose of selling it to someone else.

III. DISCUSSION

A. Discovery

1. Factual and procedural background

Mr. Johnson argues that the trial court improperly denied his motions to exclude evidence, instruct on belated disclosure of a chemist's report, and for a new trial. On May 30, 2007, the day trial commenced in this case, Mr. Johnson's attorney moved to exclude scientific testing evidence of item No. 3. Item No. 3 was the substance allegedly purchased by Officer Mkrtchyan from Mr. Johnson on February 14, 2007. Mr. Johnson's attorney had just been informed that the criminalist had inadvertently neglected to test that substance and was testing it that day. The other two items had been previously tested on February 16, 2007. The trial court denied the motion to exclude the cocaine noting: "[T]his isn't a situation where the [prosecutor] was holding back on something, hiding something and not complying with their obligations as regards to release of discovery. [¶] It appears, and she's on the record, for some reason that second element of evidence concerning the controlled substance was not tested. It will be tested. [¶] Counsel are going to receive those results apparently later today. I imagine that Counsel would have anticipated, you know, that testing. In any event, I'm balancing everything out, and I don't think it's sort of misconduct on the part of the [prosecutor]."

Thereafter, the criminalist testified at trial regarding the testing results and weights for each of the three substances. During the course of her testimony, the criminalist relied upon narcotics analysis notes made during the testing to refresh her memory. Defense counsel objected to the criminalist's use of the notes. The prosecutor explained that such notes are usually not received until the time of the criminalist's testimony. In this case, the criminalist arrived late and did not provide them to either the prosecutor or defense counsel prior to testifying. However, the notes were made available to defense counsel prior to their cross-examination.

During the course of discussions regarding jury instructions, counsel for Mr. Johnson requested the jury be instructed with CALCRIM No. 306[2] regarding the untimely disclosure of evidence. Mr. Johnson's lawyer requested the instruction regarding the late testing of item No. 3 and the notes used by the criminalist. The trial court denied the requested instruction noting: "Looking at this kind of instruction, looking at the enormous circumstances in which a party might reasonably claim there was untimely release of discovery by the People to the defense, this is not the classic situation where the People withheld information that they had in [sic] they only very lately provided it to the defense in some sort of attempt to gain a tactical advantage. [¶] Further, I did offer Defense an opportunity for additional time. They were comfortable with the time that I gave them to review the documents to continue their cross-examination. They did not ask for additional time. So I'm going to deny the request for the 306 jury instruction." Mr. Johnson's new trial motion was denied on the same grounds as the denial of the motion to exclude evidence.

2. Defendants are not entitled to a reversal

Section 1054.1 states: "The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies: [¶] (a) The names and addresses of persons the prosecutor intends to call as witnesses at trial. [¶] (b) Statements of all defendants. [¶] (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses

[2] CALCRIM No. 306, as modified and requested by the defense, states: "Both the People and the defense must disclose their evidence to the other side before trial, within the time limits set by law. Failure to follow this rule may deny the other side the chance to produce all relevant evidence, to counter opposing evidence, or to receive a fair trial. [¶] An attorney for the People failed to disclose <test results for item No. 3>. [¶] In evaluating the weight and significance of that evidence, you may consider the effect, if any, of that late disclosure."

charged. [¶] (d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial. [¶] (e) Any exculpatory evidence. [¶] (f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial." (See *Verdin v. Superior Court* (2008) 43 Cal.4th 1096, 1103-1104; *People v. Superior Court (Meraz)* (2008) 163 Cal.App.4th 28, 47.) Section 1054.5 provides the remedies for a failure to disclose evidence: "Upon a showing that a party has not complied with Section 1054.1 or 1054.3 and upon a showing that the moving party complied with the informal discovery procedure provided in this subdivision, a court may make any order necessary to enforce the provisions of this chapter, including but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order. Further, the court may advise the jury of any failure or refusal to disclose and of any untimely disclosure." (See *People v. Riggs* (2008) 44 Cal.4th 248, 306, 310; *People v. Superior Court (Meraz), supra*, 163 Cal.App.4th at pp. 48-49.)

The United States Supreme Court has held that the suppression by the prosecution of evidence favorable to an accused, including impeachment testimony, violates the Fourteenth Amendment Due Process Clause where it is material either to issues of guilt or punishment, irrespective of the good faith of the prosecutor. (*United States v. Bagley* (1985) 473 U.S. 667, 675-676; *Brady v. Maryland* (1963) 373 U.S. 83, 87; *People v. Ochoa* (1998) 19 Cal.4th 353, 473.) Moreover, the United States Supreme Court has held that evidence is material only if there is a reasonable probability that had it been disclosed to the defense, the result of the proceeding would have been different; a "reasonable probability" is one sufficient to undermine confidence in the outcome of the trial. (*United States v. Bagley, supra*, 473 U.S. at pp. 681-682; see also *Strickler v. Greene* (1999) 527 U.S. 263, 280-281; *United States v. Zuno-Arce* (9th Cir. 1995) 44

F.3d 1420, 1425, 1428; *People v. Ochoa*, *supra*, 19 Cal.4th at p. 473; *In re Brown* (1998) 17 Cal.4th 873, 884; *People v. Williams* (1997) 16 Cal.4th 153, 215.)

When weighing the effect of the undisclosed matters, that evidence is considered cumulatively for its impact and not individually. (*Kyles v. Whitley* (1995) 514 U.S. 419, 436; *Buehl v. Vaughn* (3rd Cir. 1999) 166 F.3d 163, 181.) The mere supposition that an undisclosed item might have helped the defense or affected the outcome is insufficient. (*Wood v. Bartholomew* (1995) 516 U.S. 1, 8; *Hoke v. Netherland* (4th Cir. 1996) 92 F.3d 1350, 1358, fn. 6.) The United States Circuit Courts of Appeals have held disclosure is not required if the defendant knew or should have known the essential facts permitting her or him to take advantage of the exculpatory evidence. (*United States v. Kelly* (4th Cir. 1994) 35 F.3d 929, 937; *United States v. Willis* (8th Cir. 1993) 997 F.2d 407, 412; *Tate v. Wood* (2d Cir. 1992) 963 F.2d 20, 25.) Nor is disclosure required if the defendant has enough information to ascertain the existence of the non-disclosed evidence. (*United States v. Bracy* (9th Cir. 1995) 67 F.3d 1421, 1428-1429; *United States v. Aichele* (9th Cir. 1991) 941 F.2d 761, 764.)

The California Supreme Court has held: "[N]ot every nondisclosure of favorable evidence denies due process. '[S]uch suppression of evidence amounts to a constitutional violation only if it deprives the defendant of a fair trial. Consistent with "our overriding concern with the justice of the finding of guilt," [citation] a constitutional error occurs, and the conviction must be reversed, only if the evidence is material in the sense that its suppression undermines confidence in the outcome of the trial.' [Citation.]" (*In re Brown*, *supra*, 17 Cal.4th 873, 884, quoting *United States v. Bagley*, *supra*, 473 U.S. at p. 678.) In this case, the prosecutor was unaware of failure to test what is referred to as item No. 3 until just prior to the commencement of trial. When the prosecutor discovered the failure, she immediately ordered the testing. Defense counsel was promptly advised of the situation and provided the laboratory reports. Mr. Johnson's attorney presented no evidence that there was any intentional failure to disclose. There is no evidence the delay in testing prejudiced defendants in any way. (See *People v. Zambrano* (2007) 41 Cal.4th 1082, 1133 [where the prosecutor was unaware of the evidence in question there was no

statutory duty to disclose it and nothing in the evidence was favorable or material to the defense] overruled on another point in *People v. Doolin* (January 5, 2009, SO54489 ___ Cal.4th ___, ___, fn.22; see also *United States v. Bagley*, *supra*, 473 U.S. at pp. 674-678 [defendant must show both the favorableness and the materiality of any evidence not disclosed by the prosecution]; *In re Sassounian* (1995) 9 Cal.4th 535, 544-545.)

The California Supreme Court has held a trial court has broad discretion in granting a continuance during trial. (*People v. Sakarias* (2000) 22 Cal.4th 596; *People v. Hawkins* (1995) 10 Cal.4th 920, 945, overruled in another point in *People v. Blakeley* (2000) 23 Cal.4th 82, 89.) However in this case, the defense attorneys did not request additional time to allow for either independent testing or consultation that Mr. Johnson now claims was critical. The failure to request such a remedy forfeits the issue on appeal. (*People v. Alcala* (1992) 4 Cal.4th 742, 782; *People v. Clark* (1990) 50 Cal.3d 583, 626, fn. 34.) In any event, at the time the request for CALCRIM No. 306 was denied, the trial court noted: "I did offer Defense an opportunity for additional time. They were comfortable with the time that I gave them to review the documents to continue their cross-examination. They did not ask for additional time."

Moreover, the prosecutor's failure to test the substance until the commencement of trial or to provide the criminalist's laboratory notes, none of which were the slightest bit helpful to the defense, was insufficient to undermine confidence in the outcome of the trial. Hence, no due process violation occurred in this case. (*In re Brown*, *supra*, 17 Cal.4th at p. 884; *United States v. Bagley*, *supra*, 473 U.S. at p. 678.) As to the failure to instruct pursuant to CALCRIM No. 306, the failure to do so , if such was error, was harmless under any standard of reversible error. (*Chapman v. California* (1967) 386 U.S. 18, 22; *People v. Watson* (1956) 46 Cal.2d 818, 836.) As to the new trial motion, we review the ruling for an abuse of discretion. (*People v. Hovarter* (2008) 44 Cal.4th 983, 999, fn. 4; *People v. Musselwhite* (1998) 17 Cal.4th 1216, 1252.) No abuse of discretion occurred when the new trial motion was denied for the foregoing reasons.

B. Reasonable Doubt Instruction

Both defendants argue that the reasonable doubt instruction (CALCRIM No. 220[3]) and the instruction defining "evidence" (CALCRIM No. 222[4]) were constitutionally defective. This contention has no merit. (*People v. Garelick* (2008) 161 Cal.App.4th

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[3] CALCRIM. No. 220 was given as follows: "The fact that a criminal charge has been filed against the defendants is not evidence that the charge is true. You must not be biased against the defendants just because they have been arrested, charged with a crime or brought to trial. [¶] A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt. [¶] Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. This evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt. [¶] In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. [¶] Unless the evidence proves the defendant's guilty beyond a reasonable doubt, they are entitled to an acquittal, and you must find them not guilty."

[4] CALCRIM No. 222 was given as follows: "You must decide what the facts are in this case. You must use only the evidence that was presented in this court room. Evidence is the sworn testimony of witnesses, the exhibits admitted into evidence and anything else I've told you to consider as evidence. [¶] Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys discuss the case, but their remarks are not evidence. Their questions are not evidence. Only the witness's answers are evidence. [¶] The attorneys' questions are significant only if they help you to understand the witness's answers. Do not assume that something is true just because one of the attorneys asked a question and suggested that it was true. [¶] During the trial, the attorneys may have objected to questions or moved to strike answers given by the witnesses. I've ruled on the objections according to the law. [¶] If I sustained an objection, you must ignore the question. If the witness was not permitted to answer, do not guess what the answer might have been or why I ruled as I did. If I ordered testimony stricken from the record, you must disregard it and must not consider that testimony for any purpose. [¶] You must disregard anything you saw or heard when the Court was not in session, even if it was done or said by one [of] the parties or witnesses. [¶] The court reporter has made a record of everything that was said during the trial. If you decide that it is necessary, you may ask that the court reporter's notes be read to you. You must accept the court reporter's notes as accurate."

1107, 1117-1118; *People v. Flores* (2007) 153 Cal.App.4th 1088, 1093; *People v. Westbrooks* (2007) 151 Cal.App.4th 1500, 1509.)

C. Sentencing

1. Mr. Johnson's prior prison term enhancements

Mr. Johnson argues that the trial court improperly imposed prior prison term enhancements for case Nos. BA260241 and BA277349 because those terms were served concurrently and failed to either dismiss or impose three of the remaining prior prison terms. The Attorney General concedes the issue regarding the concurrent nature of the sentences imposed as to case Nos. BA260241 and BA277349 and agrees that the trial court failed to specifically impose or dismiss three prior prison terms enhancements. We agree that that the matter should be remanded to allow the trial court to exercise its discretion in this regard. The information alleged that Mr. Johnson had served nine prior prison terms pursuant to section 667.5, subdivision (b) in the following case numbers on the indicated dates: A981068, January 18, 1989; BA044782, March 9, 1992; BA034247, May 8, 1991; BA098593, September 12, 1994; VA036749, June 21, 1996; BA188797, September 30, 1999; BA232145, October 2, 2002; BA260241, February 17, 2004; BA277349, April 29, 2005. The prosecutor later declined to proceed as to case No. BA232145. Mr. Johnson waived his right to a trial and admitted the eight prior prison allegation terms were true. Mr. Johnson moved to strike all the section 667.5, subdivision (b) priors. At sentencing, the trial court imposed three section 667.5, subdivision (b) enhancements for case Nos. [V]A036749, BA260241, and BA277349. No reference was made to the remaining admitted prior prison term allegations or to Mr. Johnson's request that they be stricken.

Case Nos. BA260241 and BA277349 were ordered served concurrently. The trial court was apparently unaware of the concurrent nature of these prison terms. As a result, we cannot determine whether the trial court intended to impose three of the eight prior

prison term enhancements or merely the most recent ones. In addition, case Nos. BA034247 and BA044782 were also served concurrently. As a result, defendant was subject to only six section 667.5, subdivision (b) enhancements. The trial court had jurisdiction only to impose or strike the six section 667.5, subdivision (b) enhancements pursuant to section 1385, subdivision (a). (§ 12; *People v. Bradley* (1998) 64 Cal.App.4th 386, 390-392; *People v. Harvey* (1991) 233 Cal.App.3d 1206, 1231; *People v. Cattaneo* (1990) 217 Cal.App.3d 1577, 1588-1589; *People v. Floyd P.* (1988) 198 Cal.App.3d 608, 612; *People v. Eberhardt* (1986) 186 Cal.App.3d 1112, 1122-1124; *People v. Superior Court (Himmelsbach)* (1986) 186 Cal.App.3d 524, 537, disapproved on other grounds in *People v. Norrell* (1996) 13 Cal.4th 1, 7, fn. 3; *People v. Santana* (1986) 182 Cal.App.3d 185, 190-191; see *People v. Alexander* (1992) 8 Cal.App.4th 602, 604.) The imposition of a legally unauthorized sentence is an issue that can be raised for the first time on appeal by the Attorney General. (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6*; People v. Scott* (1994) 9 Cal.4th 331, 354; *People v. Welch* (1993) 5 Cal.4th 228, 235; *People v. Karaman* (1992) 4 Cal.4th 335, 345-346, fn. 11, 349, fn. 15; *In re Ricky H*. (1981) 30 Cal.3d 176, 191; *People* v. *Davis* (1981) 29 Cal.3d 814, 827 & fn. 5; *People v. Serrato* (1973) 9 Cal.3d 753, 763-765, disapproved on another point in *People v. Fosselman* (1983) 33 Cal.3d 572, 583, fn. 1; *In re Sandel* (1966) 64 Cal.2d 412, 414-418.) As a result, upon remittitur issuance, the trial court is to indicate its intentions regarding the enhancements imposed as to Mr. Johnson. The trial court must either strike or impose the remaining four section 667.5 subdivision (b) enhancements. If the trial court decides to strike any or all of the remaining 667.5, subdivision (b) enhancements, it must do so in full compliance with all of the requirements of section 1385, subdivision (a) and state its reasons for the exercise of its discretion in the minutes. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 531; *People v. Orin* (1975) 13 Cal.3d 937, 944.)

2. Sentence as to count 3

Mr. Goodeau argues the trial court should have stayed the sentence imposed on the count 3 cocaine base possession for sale conviction pursuant to section 654, subdivision (a). He argues it was part of an indivisible transaction with the count 1 cocaine base sale. Section 654, subdivision (a) states: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. . . ." We review the trial court's order imposing multiple sentences in the context of a section 654, subdivision (a) question for substantial evidence. (*People v. Osband* (1996) 13 Cal.4th 622, 730-731; *People v. Downey* (2000) 82 Cal.App.4th 899, 917; *People v. Oseguera* (1993) 20 Cal.App.4th 290, 294; *People v. Saffle* (1992) 4 Cal.App.4th 434, 438.) The trial court has broad latitude in determining whether section 654, subdivision (a) applies in a given case. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312; *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1466.) In conducting the substantial evidence analysis we view the facts in the following fashion: "We must 'view the evidence in a light most favorable to the respondent and presume in support of the order the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]' (*People v. Holly* (1976) 62 Cal.App.3d 797, 803.)" (*People v. McGuire* (1993) 14 Cal.App.4th 687, 698; see also *People v. Green* (1996) 50 Cal.App.4th 1076, 1085.) Multiple criminal objectives may divide those acts occurring closely together in time. (*People v. Hicks* (1993) 6 Cal.4th 784, 788-789; *People v. Harrison* (1989) 48 Cal.3d 321, 336; *People v. Davey* (2005) 133 Cal.App.4th 384, 390.)

In this case, there were different groups of narcotics involved in each count. Count 1 involved the sale of cocaine base, which was complete when Mr. Goodeau gave it to Mr. Johnson, who in turn gave the contraband to Officer Mkrtchyan. The additional 15 rocks of cocaine base found in Mr. Goodeau's car after the arrest could have been sold to others and constituted the basis of the count 3 conviction. The 13 rocks were never sold to Officer Mkrtchyan. There is no evidence Mr. Goodeau intended to return and sell

the 13 rocks to Officer Mkrtchyan. The trial court could reasonably find that the cocaine base sale involved a separate and distinct act from the cocaine base possession for sale and impose separate sentences thereto. Given the trial court's express findings, the sentence imposed as to count 3 is not subject to the provisions of section 654, subdivision (a).

D. Additional Fees, Surcharges, and Penalties

Following our request for further briefing, the Attorney General argues that the trial court should have imposed an additional $20 section 1465.8, subdivision (a)(1) court security fee as to Mr. Goodeau. We agree. (See *People v. Crittle* (2007) 154 Cal.App.4th 368, 371; *People v. Schoeb* (2005) 132 Cal.App.4th 861, 865-866.) The trial court imposed only one section 1465.8, subdivision (a)(1) court security fee. Therefore, a total of two section 1465.8, subdivision (a)(1) fees shall be imposed as to Mr. Goodeau. In addition, the trial court imposed a $50 Health and Safety Code section 11372.5, subdivision (a) laboratory fee as to each defendant. The $50 laboratory fee was subject to the following: a section 1464, subdivision (a) $50 penalty assessment; a Government Code section 76000, subdivision (a)(1) $35 penalty assessment; a $10 section 1465.7, subdivision (a) state surcharge; and a $15 Government Code section 70372, subdivision (a)(1) state court construction penalty. Thus, the total amount owed by each defendant in addition to the $50 laboratory fee is $110. (See *People v. McCoy* (2007) 156 Cal.App.4th 1246, 1254-1257; *People v. Taylor* (2004) 118 Cal.App.4th 454, 456-457.) The trial court is to actively and personally insure the clerk accurately prepares a correct amended abstract of judgment. (*People v. Acosta* (2002) 29 Cal.4th 105, 109, fn. 2; *People v. Chan* ((2005) 128 Cal.App.4th 408, 425-426.)

IV. DISPOSITION

The judgment is modified to include the additional penalty assessments, surcharges, and fees set forth in the body of this opinion. Upon remittitur issuance, the trial court is to either strike or impose the remaining four section 667.5 subdivision (b) enhancements as to Mr. Johnson. And, the clerk of the superior court is directed to prepare amended abstracts of judgment reflecting the trial court's imposition of section 667.5, subdivision (b) enhancements and the additional $20 court security fee pursuant to Penal Code section 1465.8, subdivision (a)(1) as to Mr. Goodeau. The superior court clerk is to forward a copy of each amended abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

ARMSTRONG, J.

MOSK, J.